

# Exhibit A

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

JOSEPH L. FOWLER, SR.,                     )  
Plaintiff,                                     )  
VS.   ) CAUSE NO. 1:13-CV-515  
TIMBER ROCK RAILROAD,                     )  
L.L.C.,   )  
Defendant.                                     )

\*\*\*\*\*

ORAL DEPOSITION OF  
JOSEPH L. FOWLER, SR.  
March 18, 2014

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ORAL DEPOSITION OF JOSEPH L. FOWLER, SR., produced  
as a witness at the instance of the DEFENDANT, and duly  
sworn, was taken in the above-styled and numbered cause  
on March 18, 2014, from 9:34 a.m. to 12:40 p.m., before  
Gina Medley, RPR, CSR No. 2379, in and for the State of  
Texas, reported by machine shorthand, at the Jack Brooks  
Federal Building Videoconferencing Room, 300 Willow  
Street, Beaumont, Texas, pursuant to the Federal Rules  
of Civil Procedure and the provisions stated on the  
record or attached hereto.

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1 Q. Were you a two-man crew?

2 A. Right, that's correct.

3 Q. What position did that person have?

4 A. He was the conductor.

5 Q. He was the conductor. Did you work for him  
6 throughout your employment with Timber Rock?

7 A. No.

8 Q. When did you start working for him?

9 A. I couldn't tell you.

10 Q. Who was your supervisor?

11 A. Charles -- Bubba Douglas.

12 Q. For how long was he your supervisor?

13 A. I don't know.

14 Q. Did you have a supervisor before Bubba Douglas?

15 A. I don't know.

16 Q. Mr. Douglas was your supervisor at the time  
17 your employment ended?

18 A. That's correct. Can I inject something?

19 Q. Yes.

20 A. He was the -- he was over the train crew.

21 Q. Was there someone else in charge as well?

22 A. No, he was just -- just Bubba.

23 Q. Just Bubba. And he was over the train crew?

24 A. The train crew, yes.

25 Q. Was -- who else was out there in a supervisory

1 away with it?

2 A. No.

3 Q. Okay. I must have misheard you.

4 A. No, I did not.

5 Q. You didn't violate the rule?

6 A. I violate a rule.

7 Q. You did violate the rule?

8 A. Violate a rule.

9 Q. Okay. And you didn't get away with it?

10 A. No, I did not.

11 Q. Is it your belief that others who violated  
12 rules did get away with it?

13 A. Yes, I do.

14 Q. Who are they?

15 A. Oh, I can name -- George Yellott is one.

16 George Yellott.

17 Q. George Yellott?

18 A. Yes.

19 Q. Anybody else?

20 A. No, that's it.

21 Q. What was the rule that you violated?

22 A. The rule was -- just like what I did, I voided  
23 a track warrant while the train was outside the  
24 restricted limits. The train was outside the restricted  
25 limits.

1 Q. Was what?

2 A. The train --

3 Q. Uh-huh.

4 A. -- was outside the restricted limits.

5 Q. The train was outside the restricted limits?

6 A. Yes.

7 Q. So, the train was where it was supposed to be?

8 A. No.

9 Q. All right. And you said that it was somewhere  
10 else?

11 A. Yes. See, let me explain it to you. This is  
12 the track (indicating). This is the track (indicating).  
13 Now, this is restricted limits (indicating). Once this  
14 train -- this is the train (indicating) -- gets here  
15 (indicating), it's automatically protected. Out here  
16 (indicating) it's not automatically protected. So, when  
17 I voided the track warrant, the train was unprotected.

18 Q. So, the train was unprotected when you voided  
19 the warrant; but it wasn't in the protected area?

20 A. This was not in the protected area; that's  
21 correct.

22 Q. But you said that it was?

23 A. Yes. I just -- when I voided the track  
24 warrant, that released other trains to come in that  
25 area.

1 Q. Another train could come and hit that train?

2 A. Right.

3 Q. That was a rules violation?

4 A. Yes.

5 Q. It was a serious rules violation?

6 A. It was a serious rule violation.

7 Q. So, you're not sitting here today and saying  
8 that you didn't do what Timber Rock thought you did?

9 A. I don't understand what you mean.

10 Q. All right. That wasn't very good.

11 You're not sitting here today and saying that  
12 you didn't commit a serious rules violation?

13 A. Yes, I didn't -- I'm -- I'm not denying -- I'm  
14 not denying that I didn't commit a rule violation,  
15 serious rule violation.

16 Q. So, put another way, you did commit a serious  
17 rule violation?

18 A. Yes, I did.

19 Q. You did commit a serious rules violation?

20 A. That's correct.

21 Q. You also believe that if you had been a  
22 different color, you wouldn't have been held  
23 responsible?

24 A. Oh, no.

25 Q. Okay.



1 A. No.

2 Q. So, how does color come into it?

3 A. Because there are other people did similar or  
4 worse things than that.

5 Q. That would be George Yellott?

6 A. It's another guy. I can't remember his name;  
7 but was worse than that, what I did.

8 Q. You resigned your employment after this serious  
9 rules violation?

10 A. I was asked -- I was given a choice.

11 Q. You were given a choice whether to resign or  
12 not?

13 A. Yes.

14 Q. You opted to resign?

15 A. Yes.

16 Q. As a result of your resignation, your  
17 employment ended?

18 A. Yes. I tell you -- ask me -- can you just ask  
19 me why I resigned?

20 Q. You said you were given a choice.

21 A. Yes.

22 Q. Okay.

23 A. So, the --

24 THE WITNESS: Can I explain it to her?

25 Q. (BY MS. RUSSELL) If you didn't resign, what

1 was going to happen?

2 A. I would have left with a bad record.

3 Q. Based on the violation?

4 A. Yes. By resigning I kept a good record.

5 Q. You were able to keep your good record by  
6 resigning?

7 A. Yes, by resigning.

8 Q. That's true?

9 A. That's true.

10 Q. Sitting here today, you have a good record?

11 A. Yes. That was what -- what Mr. Douglas told  
12 me.

13 Q. Do you believe he was telling you the truth?

14 A. Yes, I did.

15 Q. Sitting here today, do you believe he was  
16 telling you the truth?

17 A. Yes.

18 Q. You would have had to go through a hearing if  
19 you didn't resign?

20 A. That's correct.

21 Q. You could have lost your license?

22 A. Yes.

23 Q. Your certification?

24 A. Yes. Ask me what they told me.

25 Q. You're talking about Bubba?

1 the days off because it was his fault.

2 Q. He asked what?

3 A. He should have the days off, the conductor, for  
4 running through the switch.

5 Q. So, are you saying that wasn't your  
6 responsibility?

7 A. No.

8 Q. Whose responsibility was it?

9 A. The conductor's.

10 Q. Any other violations?

11 A. Yes.

12 Q. What other violations?

13 A. Derail, I ran over a derail.

14 Q. You ran over a derail?

15 A. Yes.

16 Q. Now, was that a serious violation?

17 A. It was a violation, a rule violation; and the  
18 same emphasis, it was the same thing. It was the  
19 conductor's responsibility for the derail.

20 Q. And do you know whether that's a serious rules  
21 violation or not?

22 A. No, it's not a serious rule violation.

23 Q. It's not?

24 A. Not as compared to the one where the train was  
25 left out on the track unprotected.

1 Q. So, it's not as serious --

2 A. No, no.

3 Q. -- as the voiding the track warrant?

4 A. No, it's not.

5 Q. Do you know whether it's serious or not,  
6 though?

7 A. It's serious.

8 Q. It's serious?

9 A. Yeah.

10 Q. Okay. Now, what happened as a result of the  
11 derail?

12 A. Derailment?

13 Q. Yes, sir.

14 A. I don't remember. I don't remember.

15 Q. Did you agree to waive your hearing?

16 A. With Bubba?

17 Q. Yes, sir.

18 A. Yes, I did.

19 Q. Did you take a suspension?

20 A. For which one?

21 Q. The derail, the derailment.

22 A. I don't remember if I did or not.

23 Q. Do you take any responsibility for the  
24 derailment?

25 A. No, I do not. No, I do not.

1 Q. And that's when he gave you the choice about  
2 resigning?

3 A. Yes.

4 Q. Or going forward with the hearing?

5 A. Yes.

6 Q. And you chose to resign?

7 A. Resign.

8 Q. He didn't force you, right?

9 A. No. He just made it clear what would happen if  
10 I didn't resign.

11 Q. By saying it didn't look good?

12 A. Yes.

13 Q. Did he say anything else?

14 A. Just said it didn't look good.

15 Q. Okay. Did you ask him what he meant by that?

16 A. Yes.

17 Q. What did he say?

18 A. He told me that if I resigned, I keep my good  
19 record. If I go through an investigation, you leave  
20 with a bad record. Anyway it was, I would no longer be  
21 a Timber Rock employee.

22 Q. What?

23 A. Anyway it went, I went through an investigation  
24 or if I resigned, I was not going to be a Timber Rock  
25 employee any longer.

1 Q. He said you would not be a Timber Rock  
2 employee, or that's what you interpreted?

3 A. That's what I interpreted.

4 Q. That's what you interpreted --

5 A. Yes.

6 Q. -- by "it doesn't look good to me"?

7 A. Yes, because I was -- what he said, you can  
8 leave with a good record or be -- go through an  
9 investigation and leave with a bad record.

10 Q. That's what you interpreted it to mean?

11 A. That's right. That's right.

12 Q. He didn't say that?

13 A. No, that's what he said -- not the -- I  
14 interpret the interpretation, but I assumed what he was  
15 saying.

16 Q. I hear you, sir.

17 So, he said it didn't look good; and that's  
18 what you interpreted it to mean?

19 A. If I tell you to resign, keep a good record; go  
20 through investigation, you have a bad record -- you  
21 leave with a bad record.

22 Q. He said that?

23 A. Yes.

24 Q. I thought you told me he just said it didn't  
25 look good?

1           A.    It didn't look good.  You go -- you resign, you  
2   keep a good record.  You go through investigation, it's  
3   not looking good.

4           Q.    All right.

5           A.    You can leave with a good record, resign with a  
6   good record; termination, bad record.

7           Q.    All right.

8           A.    Bad record -- termination, bad record.

9           Q.    All right.

10          A.    Okay.

11          Q.    So we're clear, he offered you the opportunity  
12   or the choice to resign?

13          A.    That's correct.

14          Q.    Where you could leave with a good record?

15          A.    That's correct.

16          Q.    And then he told you if you didn't resign --

17          A.    I would leave with a bad record.

18          Q.    Did he say that, or did he say it didn't look  
19   good?

20          A.    He said I would leave -- I didn't make up the  
21   word bad record.  He told me, he said, "You'll leave  
22   with a bad record."

23          Q.    He didn't say he didn't know what was going to  
24   happen?

25          A.    He said, to me, I would leave with a bad

1 record.

2 Q. That's your testimony under oath?

3 A. Yes.

4 Q. He said if you went through with a hearing, you  
5 would leave with a bad record?

6 A. With a bad record.

7 Q. Did he say if the hearing didn't go in your  
8 favor?

9 A. He just -- if I went to a meeting, I would  
10 leave with a bad record. If I resign, I would leave  
11 with a good record.

12 Q. Was he in control of the hearing?

13 A. Yes, he was.

14 Q. He was? He was going to be the hearing  
15 officer?

16 A. He was the only one in -- he and I was the only  
17 one in the office.

18 Q. If you went to hearing, would Mr. Marshall be  
19 the hearing officer?

20 A. I don't know.

21 Q. Did you feel like he controlled the hearing?

22 A. I don't know. He just gave me -- just gave me  
23 an option. I took the option to keep my good record.

24 Q. It was your choice?

25 A. Right.



1 A. I didn't understand; but yes, there it is, yes.

2 Q. Any reason to dispute this document?

3 A. No.

4 Q. You signed this document voluntarily?

5 A. Yes.

6 Q. You resigned voluntarily?

7 A. Yes.

8 Q. Had you not signed this document, you would

9 have gone forward with the hearing?

10 A. That's right.

11 Q. Earlier I asked you if you thought Bubba

12 Marshall was a fair person?

13 A. Yes.

14 Q. And you told me about the heater in the  
15 train --

16 A. Yes.

17 Q. -- and this conversation about it not looking  
18 good?

19 A. Uh-huh.

20 Q. Is there any reason other than those two  
21 reasons that makes you think he's not a fair person?

22 A. Yes, there's more reasons; but those are the  
23 two that I could verify through me.

24 Q. What are your other concerns about him not  
25 being a fair person?

1 A. The way he talked to people.

2 Q. How did he talk to people?

3 A. If he had a bad day, he would just talk rude.

4 Lots of -- I know how -- I just know, as far as my -- as  
5 far as I'm concerned, we was good -- we were good  
6 friends.

7 Q. He was a good friend?

8 A. Yeah, never had any -- any problems.

9 Q. No problems?

10 A. No. He -- but, you know, he -- a normal  
11 investigation, they call them a test. They call it a  
12 test. They watch you -- they come out and watch you  
13 while you're doing -- while you're working, that kind of  
14 stuff.

15 Q. Is that something that he was supposed to do as  
16 a supervisor?

17 A. Yes.

18 Q. Did he watch everybody?

19 A. I couldn't -- I don't know.

20 Q. Do you believe he watched some people more than  
21 others?

22 A. Yes.

23 Q. Who did he watch more than others?

24 A. I don't know. I don't have a clue who he  
25 watched. I just know that was part of his job

1 description. And also he could call Shane, have Shane  
2 to do it, Shane the yardmaster.

3 Q. So, do you feel like watching you was somehow  
4 unfair?

5 A. Well, no, I don't, because it's part of his  
6 job.

7 Q. Okay. You said sometimes he seemed rude?

8 A. Yes, he was.

9 Q. How often?

10 A. I don't know. I don't know what -- he have  
11 people -- he have people that was intimidated --  
12 intimidated him.

13 Q. People intimidated him?

14 A. No. He intimidated the employees.

15 Q. Who would he intimidate?

16 A. The employees, all of us.

17 Q. Did you ever talk about it with anybody?

18 A. Huh-uh. They would say, "Bubba's coming," you  
19 know, "Bubba is coming" and everybody will get straight;  
20 but I say I just -- he would just intimidate people.

21 Q. Do you think he intended to intimidate people?

22 A. I don't know.

23 Q. Any other issues with Mr. Marshall?

24 A. Huh-uh, no, I don't have any.

25 Q. So, even though you found him to talk rude

1 sometimes --

2 A. Yes.

3 Q. -- you still thought that he was a good friend,  
4 and you had no problems with him?

5 A. I didn't have any problems with him.

6 Q. Sitting here today, do you have any problems  
7 with him?

8 A. Today, now?

9 Q. Yes.

10 A. No.

11 Q. Do you have any problems with anyone at Timber  
12 Rock?

13 A. Yes.

14 Q. Who?

15 A. Can't think of his name right now. I can't  
16 think of his name.

17 Q. Is it just one person?

18 A. Yeah, he was like one of the main persons.

19 Q. You have a problem with one person at Timber  
20 Rock?

21 A. No, it was more than one; but he was the main  
22 person.

23 Q. Okay. Tell me everyone at Timber Rock that you  
24 have a problem with.

25 A. No problems, just him. I have no -- we didn't

1 that's true.

2 Q. It's true that you received 15 days deferred?

3 A. I didn't know of 15 days -- no, that's not  
4 true. 15 days deferred, no.

5 Q. Is it true that you failed to stop the  
6 locomotive short of the fixed derail --

7 A. Yes.

8 Q. -- and you caused the locomotive to derail?

9 A. Yes.

10 Q. That's true?

11 A. That's true.

12 Q. Your question is whether you received the  
13 15 days deferred?

14 A. Yes. My question is I didn't know I had --  
15 they gave 15 days deferred.

16 Q. I'm sorry?

17 A. Yes, that's my question; but employee is  
18 receiving 15 days deferred.

19 (EXHIBIT NO. 9 MARKED)

20 Q. (BY MS. RUSSELL) I've handed you a Waiver of  
21 Hearing that we've marked as Exhibit No. 9. It's Bates  
22 labeled TIBR 91 (tendering). If you'd take a look at  
23 that, please.

24 A. Yes.

25 Q. Is that your signature?

1 to work as a conductor. And that's the more severe than  
2 what I did.

3 Q. Okay. Is this John Grant?

4 A. All I know is John. All I know is John. See,  
5 he worked -- I worked in Silsbee. He worked up in  
6 Jasper.

7 Q. How do you know what happened to him?

8 A. Because Tony Williams (sic), the track  
9 supervisor, called the dispatcher, wanting to get a  
10 track warrant to go towards Kirbyville because he  
11 told -- and the dispatcher told Tony -- Tony Williams  
12 (sic) that the train was in Kirbyville; but Tony said,  
13 "No, it's not. It's in Jasper."

14 See, when something like that happen, it goes  
15 through all out. We get -- we have like a more  
16 efficient rule testing, if something happen like that.  
17 We have -- we have the supervisor, Bubba, come out and  
18 talk to a bunch of the crews. Because he ran -- that's  
19 why.

20 Q. So, you're talking about the violation?

21 A. Yes, the violation.

22 Q. How do you know what happened to him in terms  
23 of discipline?

24 A. Because everybody -- because it's a small  
25 company. Everybody know what happens. Plus I was

1     there. I saw him. I talked to him. I was there when  
2     he came in as a conductor. I was there when he got laid  
3     off. I was there when he lost his engineering license.  
4     I was there when he came on the train as a conductor.  
5     Not engineer, he came as a conductor.

6           Q.     So, he took a demotion?

7           A.     Yes -- for a certain length of time.

8           Q.     I'm sorry?

9           A.     For a certain length of time.

10          Q.     Okay. And based on your understanding of the  
11     violation and the discipline that resulted, you feel  
12     like he was treated better than you?

13          A.     Yes, because of the -- if -- for example, if  
14     Tony -- if Tony Williams (sic), the supervisor of the  
15     track, would have been on the track around the curve,  
16     figured out that they were safe, and here comes the  
17     engine around that curve, think about the severity, the  
18     lives could have been -- lives and -- and the damage to  
19     the equipment.

20          Q.     Who else do you feel was treated better?

21          A.     The same guy again.

22          Q.     That was John Grant?

23                   What happened?

24          A.     They had a special order. It was a crossing --  
25     I don't know where the crossing was at -- to stop and

1 flag the crossing. And it was a guy that works --  
2 working on the bell that goes down, and they went  
3 through the crossing. That was a rule violation.

4 Q. Was he disciplined?

5 A. No. No, he was not.

6 Q. When did that happen?

7 A. I don't know.

8 Q. Did the company know about the violation?

9 A. Yes.

10 Q. Who knew about it?

11 A. I don't know. I just know that the guy -- the  
12 signal maintainer reported it.

13 Q. Who is that?

14 A. I don't know.

15 Q. Did you report it?

16 A. No. I wasn't there.

17 Q. You heard about it?

18 A. That's right.

19 Q. And based on what you heard, you feel like he  
20 was treated better?

21 A. Yes. That's a rule violation also. A car  
22 would have been coming, then there could have been a  
23 catastrophe.

24 Q. Okay. Who else?

25 A. Okay. Let me think of his name.



1 Q. Actually let me give you your charge of  
2 discrimination. I think this may help things along a  
3 little bit. We're marking it as Exhibit 11. It's Bates  
4 labeled TIBR 236 through 237.

5 (EXHIBIT NO. 11 MARKED)

6 MS. RUSSELL: I've got a copy for your  
7 lawyer (tendering).

8 Q. (BY MS. RUSSELL) We were talking about John  
9 Grant.

10 A. Yes.

11 Q. And then you also talk about Chad. Is that  
12 Chad Davis?

13 A. Uh-huh.

14 Q. What's your concern about Chad?

15 A. Well, he was coming to work intoxicated; and  
16 then he would take a call from the dispatcher and  
17 wouldn't show up to work.

18 Q. So, no show; and when he did show, he would be  
19 intoxicated?

20 A. Yes, on numerous occasions.

21 Q. Did you report him?

22 A. No.

23 Q. You didn't?

24 A. No.

25 Q. Even though you knew he was intoxicated?

1           A.    I didn't report him. The report came because I  
2    went with him -- he was like in Jasper. I was in  
3    Silsbee.

4           Q.    Well, how did you know he was intoxicated?

5           A.    It was -- everybody knew he intoxicated.

6           Q.    How do you know?

7           A.    Because the conductor that worked with him  
8    knew.

9           Q.    How?

10          A.    He smelled it on him.

11          Q.    Who is that?

12          A.    I can't remember the conductor name. And then  
13    as far as taking a call, not showing up, they had to  
14    call in another conductor to -- to take his spot.

15          Q.    Did you report that?

16          A.    No.

17          Q.    Now, it's against the safety rules to show up  
18    intoxicated?

19          A.    Yes.

20          Q.    Didn't you have a duty to report that?

21          A.    I'm not there when he showed up.

22          Q.    Well, then how do you know it happened?

23          A.    Because the conductor that relieved him told --  
24    talked about it.

25          Q.    Who is that?

1 A. I can't remember his name.

2 Q. And then is Cooter Creed, Todd Creed?

3 A. Yes.

4 Q. And your concern about Mr. Creed is that he  
5 went 10 miles over the speed limit and was not  
6 terminated?

7 A. Not terminated. He got -- he got -- well, they  
8 knew he did it.

9 Q. When did that happen?

10 A. I don't know.

11 Q. Did you report him?

12 A. No. He was reported, but I didn't report him.

13 Q. He was reported?

14 A. Yes.

15 Q. Who reported him?

16 A. I don't know, but Bubba knew about it.

17 Q. How do you know?

18 A. Mr. Douglas knew about it.

19 Q. How?

20 A. Because the conductor -- the conductor.

21 Q. A conductor --

22 A. Uh-huh.

23 Q. -- reported him?

24 A. That was with him, yes.

25 Q. Who was that?

1 A. I don't know who it was.

2 Q. Did you witness him going too fast?

3 A. No, I did not.

4 Q. Did you witness Chad Davis drunk?

5 A. No, I didn't.

6 Q. Did you witness the violations that you feel  
7 John Grant committed?

8 A. No, I didn't.

9 Q. George Yellow, is that George Yellott?

10 A. Yellott.

11 Q. Looks like your concern is that he violated the  
12 policies at work literally every day by driving over the  
13 speed limit?

14 A. Yes.

15 Q. Sitting here today, your testimony is that  
16 George Yellott violated the policies at work every day  
17 by driving over the speed limit?

18 A. That's right.

19 Q. Did you work with him every day?

20 A. No.

21 Q. So, this was every day you saw him?

22 A. No, I didn't see him every day.

23 Q. So, how can you say he violated the policies  
24 every day?

25 A. Well, I can't say that; but I know he did it.

1 Q. What's that?

2 A. I didn't -- I can't -- I didn't say I -- I  
3 didn't see him do it every day, but I saw him do it.

4 Q. You saw him do it. How often did you see him  
5 do it?

6 A. When he'd come out the yard and Mr. --  
7 Mr. Clark was the one that -- where that paper?  
8 Mr. Clark, he talked to him about it.

9 Q. Now, are you talking about driving a train?

10 A. Yes, yes.

11 Q. Did you ever report him?

12 A. No, I did not.

13 Q. Did you ever say anything to him?

14 A. This what happen, if I say something to him  
15 about it, he would go to Mr. Douglas and then -- I  
16 didn't say anything to him. No, I did not.

17 Q. Did you ever say anything to Cooter Creed about  
18 driving 10 miles over the speed limit?

19 A. No, I did not.

20 Q. Did you ever say anything to Chad Davis about  
21 coming to work intoxicated?

22 A. No, I did not.

23 Q. Did you ever say anything to Chad Davis about  
24 being no call/no show?

25 A. No, I did not.

1 Q. All right. Is this your signature on the  
2 second page?

3 A. Yes, it is.

4 Q. Everything in here true?

5 A. Yes.

6 Q. Do you see where it's typed: When I asked  
7 Bubba Douglas why the second policy rule -- why doesn't  
8 the second policy rule apply to me, five days off with  
9 no pay, he simply replied it didn't look good, is that  
10 what you told me earlier?

11 A. Uh-huh.

12 Q. Is that a "yes"?

13 A. Yes, he said it didn't look good.

14 Q. And that you had the choice to resign with a  
15 good record or go to a formal meeting and get fired with  
16 a bad record?

17 A. Right.

18 Q. And that it was a no-win situation?

19 A. No-win situation for me.

20 Q. And the statement about the second policy rule  
21 and why it didn't apply to you with five days off with  
22 no pay, that was based on your understanding of the  
23 Accountability and Development policy?

24 A. Yes.

25 Q. So, what's the basis for your age

1 discrimination claim?

2 A. Because at this -- at that point in time, I  
3 only had like two -- 2013, so, I was 59. I only had  
4 three years left, and I would draw full retirement. At  
5 the age of 62, I would be able to retire.

6 Q. If you had made it to 62?

7 A. Yes.

8 Q. Now, don't your years of service in the  
9 railroad have something to do with it?

10 A. Yes.

11 Q. How do they factor in?

12 A. They factor in the amount of money, how long --  
13 the amount of money that you have in your retirement  
14 and -- and it's based on how much money, how much you  
15 get per month.

16 Q. Are you 62 now?

17 A. No, I'm 60.

18 Q. You're 60?

19 A. Yes.

20 Q. So, is it your understanding that you had to be  
21 employed in the railroad until you turned 62?

22 A. Yes. Yes.

23 Q. To get the full retirement?

24 A. In other words, I would get the retirement -- I  
25 was able to retire with my full -- keep all my insurance

1 benefits and more money at the age of 62.

2 Q. Now, are the benefits that you're getting going  
3 to increase when you turn 62?

4 A. I don't know. I don't -- I just -- I don't  
5 know.

6 Q. And there isn't a factor of you add your years  
7 of service to your age?

8 A. Add it to my --

9 Q. Have you heard of that, where you add your  
10 years of service --

11 A. Yes, to your age, yes.

12 Q. And what does that number have to be?

13 A. I think it's got to be 60 -- I don't know. I  
14 don't know.

15 Q. Does it have to be 90?

16 A. Not no 90 years, no. Not no 90 years.

17 Q. Years of service plus age?

18 A. Yeah, something similar to that. I don't know.  
19 I think you got to have -- I know you have to be of a  
20 certain age and certain amount of years, the more -- the  
21 more you worked, the more money you would get.

22 Q. So, what's the basis for your statement that  
23 "The company did not want to pay me full retirement"?

24 A. It will cost them more money.

25 Q. That's the basis for your age discrimination



1 Q. What else do you base your claim for age  
2 discrimination on?

3 A. I would have got anywhere from six to \$800 or  
4 even more than that per month. I'm just saying anywhere  
5 from six to eight or nine more per month, compared to me  
6 taking that early resigning.

7 Q. And that's the retirement piece -- retirement  
8 benefits piece?

9 A. I don't know what you mean.

10 Q. That's what we talked about --

11 A. Yes.

12 Q. -- right?

13 A. Yes.

14 Q. The retirement --

15 A. The money that I lost having resigned early.

16 Q. Oh, you mean if you had kept working, you would  
17 have earned more money?

18 A. Oh, yes. Yes, I would have.

19 Q. So, if you hadn't resigned and you stayed  
20 working at Timber Rock, you would have continued to earn  
21 money for the work you did?

22 A. That's right, for my age when I resigned, from  
23 59, that's three more years. It'd have been more -- I  
24 would have got more money per month that I would be  
25 getting.

1 Q. Because you would be working?

2 A. Right, that's correct.

3 MS. BANDO: Can we go off record?

4 MS. RUSSELL: Yes.

5 (OFF THE RECORD)

6 A. At the age of 59, I had three years left to  
7 work. So, those three years, I lost money. If I had  
8 continued to work, went to work for the last three  
9 years, I would have made more money than I will when I  
10 retire now.

11 Q. (BY MS. RUSSELL) Now, you told me you hadn't  
12 looked for a job since you resigned.

13 A. No, I have not.

14 Q. Mr. Fowler, it's your belief that John Grant,  
15 Chad Davis, Cooter Creed, George Yellott, and Ricky  
16 Paine were treated better than you --

17 A. Yes.

18 Q. -- is that right?

19 A. Yes.

20 Q. Was anyone else treated better than you?

21 A. Well, yes. There were -- there are more. For  
22 example, Mr. Kyle Mitchell, the union representative,  
23 didn't bother to show up; and I know he knew about the  
24 meeting.

25 Q. He didn't bother to show up where?

Local File

16.70

# **Application for Employment** **Watco Companies 315 W. 3<sup>rd</sup> St. Pittsburg, KS 66762**

The Watco Companies, Inc. considers all applicants for all positions without regard to race, color, national origin, religion, age, creed, gender, marital or veteran status, disability, handicap, or any other legally protected status.

## PLEASE PRINT

Position Applied For: Engineer or brakeman Date of Application: 5-24-04  
 Name: Fowler Joseph L  
LAST FIRST MIDDLE  
 Social Security Number: 450 / 02 / 5970 Telephone Number (409) 899-2509  
 Address: 5780 Sunbird Lane Beaumont Texas 77708  
STREET ADDRESS CITY STATE ZIP  
 Previous Addresses if present address represents less than three years:  
STREET ADDRESS CITY STATE ZIP  
STREET ADDRESS CITY STATE ZIP

Date available to begin work: 6-1-04 Desired Salary: \$ 14.00 hourly \$ hr monthly \$ annually

Have you ever been employed by this Company or any of its subsidiaries or affiliated companies? ☐ Yes ☒ No

If yes, dates employed and position(s) held: Dates Employed            To:            Position(s) Held:           

Are you able to meet the attendance requirements of the position for which you are applying? ☒ Yes ☐ No

Will you work overtime if required? ☐ Yes ☐ No

Are you legally eligible for employment in the United States? ☒ Yes ☐ No  
 (Proof of U.S. Citizenship or immigration status will be required upon employment)

Are you at least 18 years of age? ☒ Yes ☐ No

Have you ever been convicted of a felony? ☐ Yes ☒ No

If you answered "yes" to the above, please explain:  
 (Answering "Yes" does not automatically bar an applicant from employment. Factors such as date of the offense, severity and nature of the violation, and position applied for are taken into consideration.)

Please provide the following information regarding your last former employers, beginning with the most recent, to cover a ten-year time frame. Attach additional pages if necessary.

Dates Employed: From: <u>1984</u> To: <u>Present</u>	Employer Name: <u>Trans Global Solution</u> Address: <u>Nederland</u> City, State Zip: <u>          </u> Immediate Supervisor/Title: <u>Jack Campbell</u> Phone Number: ( <u>409</u> ) <u>757-1030</u> May We Contact? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Later	Starting Pay: \$ <u>13.90</u> per hr <u>7.50</u> Ending Pay: \$ <u>13.90</u> per hr Reason for Leaving: <u>Still working</u>
Dates Employed: From: <u>1977</u> To: <u>1983</u>	Employer Name: <u>Santa Fe RR</u> Address: <u>Silsbee</u> City, State Zip: <u>          </u> Immediate Supervisor/Title: <u>C.W. Lee</u> Phone Number: ( ) <u>          </u> May We Contact? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Later	Starting Pay: \$ <u>11.80</u> per hr Ending Pay: \$ <u>14.00</u> per hr Reason for Leaving: <u>Laid off</u>
Dates Employed: From: <u>1973</u> To: <u>1977</u>	Employer Name: <u>Kirby Lumber Co</u> Address: <u>Silsbee</u> City, State Zip: <u>Closed down</u> Immediate Supervisor/Title: <u>          </u> Phone Number: ( ) <u>          </u> May We Contact? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Later	Starting Pay: \$ <u>5.50</u> per hr Ending Pay: \$ <u>8.00</u> per hr Reason for Leaving: <u>Better Job</u>

Watco Companies Application for Employment



TIBR 138

Local File

**Skills and Qualifications**

Summarize any specialized training, licenses, skills and/or certificates you have received that may qualify you as being able to perform job-related functions in the position for which you are applying.

This is all I have did for the last 26 years

**Education (if job related)**

Name and Location	Years Completed	Course of Study / Degree or Diploma
High School <u>Kirbyville High</u>	<u>4 year</u>	<u>Automotive Math</u>
College		
Trade School or Other		

If driving is an essential function of the job, complete this section

Driver's License 07441045

State Issued Ty

D.O.B. 11-21-53

Expiration Date

Traffic Convictions and Forfeitures for the past three years (Other than parking violations)

Speeding  
Reckless

(Location) (Date) (Charge) (Penalty)

Have you ever been denied a license, permit or privilege to operate a motor vehicle Yes ☐ No ☒

Has any license, permit or privilege ever been suspended or revoked? Yes ☐ No ☒

(If the answer is yes to either one of the two previous questions, attach statement giving details)

**Driving Experience**

Class of Equipment	Type of Equipment (Van, Tank, Flat, Etc.)	Dates From To	Approximately Number of Miles (Total)
Straight Truck			
Tractor & Semi Trailer			
Other			

**Accident Record for the Past Three Years or More**

Date	Nature of the Accident (Head-on, Rear-end, Upset Etc.)	Fatality	Injury	Non-Injury
Last Accident <u>9-64</u>				<input checked="" type="checkbox"/>
Next Previous				
Next Previous				

**Applicant Statement**

I certify that the information I have provided in this application is true in all respects, and I agree that if the information given is found to be false in any way, it shall be sufficient cause for denial of employment or immediate discharge. I expressly authorize, without reservation, the employer or its representatives to use any information in this application to verify my statements. I expressly authorize, without reservation, past employers, all references, and any other persons to answer all questions asked concerning my ability, character, general reputation, characteristics, mode of living and previous employment. I release all such persons from any liability or damages for having furnished such information.

I understand that nothing contained in this employment application or in the granting of an interview is intended to create an employment contract between The Watco Companies and myself for either employment or for the providing of any benefits. No promises regarding employment have been made to me, and I understand that no such promise or guarantee is binding upon The Watco Companies unless made in writing and signed by the President. If I am hired, I understand that I have the right to terminate my employment at any time, with or without notice and with or without cause, and that The Watco Companies reserve the same rights.

I also understand that, if I am hired, I will be required to provide proof of identification and verification of my eligibility to work in the United States, and that The Watco Companies will require me to complete an I-9 Form for this purpose.

**DO NOT SIGN UNTIL YOU HAVE READ THE ABOVE STATEMENT.**

I certify that I have read, fully understand and agree to the conditions in the above statement.

Signature of Applicant Joseph Fowler Date 5-24-04

## Watco Transportation Services A Development and Accountability Policy

(Revised June 4, 2009)

### Statement of Principles

Watco Transportation Services recognizes the important contributions Team Members make to our overall success. Our Team Members are truly the most important asset we have and must be treated consistently and with respect. It is our commitment to ensure a safe environment for our Team Members to work. All Team Members are expected to contribute to our common success and realize reward for safe and efficient job performance. All Team Members are encouraged to share a commitment to providing transportation services of the highest quality to our customers and to keep the commitment to safety in mind whenever they perform their duties.

To ensure a safe environment for our Team Members and the communities we serve, the movement of trains, and maintenance of equipment, track and facilities must be conducted on the basis of carefully designed rules and procedures. Failure to follow these rules and procedures may result in death, injury or substantial financial loss. All Team Members, including managers are expected to be safe, conscientious and dependable, comply with rules and policies, and display a positive behavior toward teamwork. Management must provide fair and consistent treatment to all Team Members, using coaching and training prior to achieving desired behavior. Managers are responsible and accountable to ensure safe operations through education, training, in-field efficiency testing and other forms of development and methods to ensure all Team Members operate safely. Positive corrective action with the objective of correcting undesired behavior is the basis of this policy. Consistent with these principles, a breach of a rule, procedure or instruction shall be handled in the manner described in this policy. The information contained in this document applies to all Watco Transportation Services Team Members, both hourly and salary. Company policy compliance is demanded as a condition of employment from all Watco Transportation Services Team Members; hourly and salary alike. All references to "Team Member(s)" in this document applies equally to salaried and hourly positions.

### General Guidelines

Offenses that are not considered serious violations of rules or policy will be subject to the standard handling procedures described in Part I of this policy. Offenses of a more serious nature, or offenses that warrant dismissal, will be subject to the handling prescribed in Part II and Part III of this policy. Offenses listed as serious or warranting dismissal in Part II and Part III are illustrative only, and not intended to limit management's right to classify offenses as serious and cause for dismissal.

### Part I: Standard Handling

For most offenses, the main concern is with cumulative behavior. Any Team Member demonstrating a pattern of misconduct is given progressively more discipline with each succeeding offense, depending on the frequency and nature of the offenses. This will ultimately lead to dismissal if performance does not improve.

A Team Member who commits more than one offense will progress through a series of levels based on prior history of rule violations. In determining the level of discipline, the Team Member's rule violation history is considered within a two-year period prior to the current case. Each offense within the last two years for which a discipline sanction was issued, increases the level of discipline for the current offense. Guidelines for determining the specific discipline sanction and associated levels are as follows:

#### **Level I - first offense within 1 year - formal letter of reprimand**

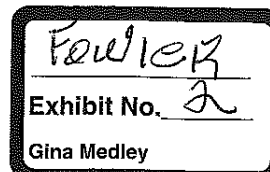
The recipient must respond by developing with management a written solution which is accepted by both parties to correct the behavior (Positive Corrective Action) outlined in the letter.

#### **Level II - second offense within 1 year - 7 day suspension**

A Team Member will be given from 1 to 7 calendar days' suspension. This suspension may be deferred for a period not to exceed six months at (supervisor) General Managers discretion. If there is another offense during the deferment, progression to **Level III** is automatic.

#### **Level III - third offense within 2 years - 14 day suspension**

A Team Member will be given 14 calendar days' suspension. Any suspension time deferred in **Level II** will be added to suspension time issued in **Level III**. The Team Member is given one last chance to correct his/her behavior prior to dismissal for pattern of misconduct.



TIBR 211



**Dismissal - fourth offense within 2 years - dismissal**

Team Member is dismissed from service based on an established pattern of misconduct because he/she proved unresponsive to corrective action.

**Part II: Serious Offenses**

This part of the policy describes the corrective action prescribed for a serious offense. A serious offense may not be sufficient by itself to warrant dismissal, but substantial suspension and retraining will be required. Furthermore, if the Team Member commits two serious offenses within a specified period, not to exceed three years, he/she will be subject to dismissal. For purposes of illustration, the following rule violations are considered serious (this is not an exhaustive list):

- Operating rule violation for which FRA engineer decertification is also mandated (also considered a serious rule violation for Transportation Team Member on the ground)
- Failure to comply with rules or procedures that protect Team Members or machinery where such protection is defined by dispatcher, prescribed flags, other signal device, or in writing.
- Failure to perform duties causing or contributing to a serious derailment (total damages exceed \$7,500), damage to rolling stock, track equipment or shop machinery, or injury to others.
- Failure to report a known on-duty injury before the completion of tour of duty.
- Unauthorized absence. When not available for work it is the Team Member's responsibility to report their absence to their immediate supervisor, location manager, General Manager or other duly appointed management official of that location or Railroad prior to the absence.
- Any other serious violation of Operating Rules, Maintenance of Way Rules, Mechanical Department Rules, Safety Rules, Conduct Rules, or General Instructions issued to Team Members.
- Any second rules-violation incident resulting in property damage (total property damages exceed \$4,000).

A Team Member who commits a serious offense is assigned a Level S.

**Level S - first serious offense - suspension or retraining as appropriate.**

A Team Member who commits a serious offense will be given a 30 day suspension and assigned a probationary period of one to two years. Additionally, the Team Member may be offered the opportunity to remove up to half of his/her suspension through a Positive Corrective Action Program, provided the Team Member accepts responsibility for the rule violation or offense (See Part V of this Policy).

When determining the proper review period for a first serious offense, a manager should consider the Team Member's history of rule violations and attitude. The Team Member's record determines the length of the probationary period and is a key factor, along with the violation, in determining the use of the PCA program. To be consistent, managers will review the two years prior to the current case to determine if a reduction of the two year probationary period is warranted. If such a reduction is warranted, it will be stated in the letter advising the Team Member of the discipline assessed.

**Dismissal - second serious offense within review period**

In a case where a Team Member has committed a second serious offense within an assigned review period, he/she will be subject to dismissal.

**Part III: Offenses Warranting Dismissal**

The ultimate sanction of dismissal is primarily designed to be a response to a series of offenses, coupled with no sign of significant improvement by the Team Member. Nonetheless, a single rule violation also may be so serious as to warrant dismissal.

**A Team Member who commits one of the offenses may be dismissed regardless of the nature of his work history and with no leniency for reinstatement permitted.**

**A. Breaches of personal integrity or standards of personal conduct**

- Theft or other act with intent to defraud Watco Transportation Services of monies or property not due, to include falsification or misrepresentation of an on-duty injury.
- Gross dishonesty in communication with officials of the company about any job-related subject.
- Refusal to submit (at any time) to required testing for drug or alcohol use, adulteration of sample, or failure to comply with instructions of the Medical Director.
- Causing altercation.
- Gross negligence, indifference to duty, intentional destruction of company property, malicious rule violation and insubordination.
- Unauthorized absences or anything that could be determined as job abandonment or excessive absences.
- Insubordination or other disruptive behavior.

#### **B. Severe violation of safe operating practices**

- Rule violation(s) that result in collision and or derailment, injury, fatality or extensive damage to company or public property.
- Knowingly placing the safety of self or others in immediate danger.
- A fourth offense (of any kind) within three (3) years or a second serious offense within the assigned review period.
- Speeding
- Any second rules-violation incident resulting in property damage (total property damages exceed \$4,000).

#### **C. Drug and Alcohol**

- Positive test results from random, reasonable cause, probable cause and any other test recommended by a licensed health care professional are cause for dismissal.
- Self referral will be handled through the Team Member Assistance Program.

### **Part IV: Administration of Suspension and Degree of Discipline**

An offense that warrants discipline will be permanently recorded in the Team Member's personal record and Inforail. All suspensions are unpaid and when a suspension is found to be the required course, suspension time will commence upon findings of the investigation.

A suspension will commence on the date discipline is issued unless the Team Member is being withheld from service pending an investigation.

Team Members who complete a deferment period without further disciplinary action are considered to have completed the terms of the suspension. However, previously deferred suspension will be added to the next level of suspension when a violation occurs during the deferred period.

Subsequent offenses by a Team Member will be taken into consideration for purposes of establishing discipline level when implementing this program.

### **Part V: Positive Corrective Action**

Management will have the ability to offer an Team Member in Level I, Level II or Level S an opportunity to substitute Positive Corrective Action (PCA) for up to one half of the assigned suspension. Team Members involved in Positive Corrective Action must perform the same, working no more than eight hours in any twenty four hour period, accumulating no more than forty (40) hours in any five day period. In general, one eight-hour day of PCA will equal two days of suspension. PCA cannot be used with a deferred suspension, but may be served concurrently with the balance of an assigned suspension. PCA may not be used for a Team Member who has committed a willful rule violation or does not accept responsibility for his/her actions. A Team Member who

participates in PCA will receive 75% of their regular rate of pay. PCA must never be used as the sole purpose of benefiting the Railroad.

The manager should develop and implement PCA based on the specific circumstances surrounding the rule violation. Some suggestions are:

- Have the Team Member conduct job briefings with crews on the incident and how it could have been prevented.
- Give the Team Member cross-functional training with other Team Members related to the offense.
- Give the Team Member formal classroom retraining as part of an "alternative discipline" program.
- Assign the Team Member to observe an experienced Team Member working in the same job.

#### **Part VI: Final Resolution of Incident**

Upon the assessment of any form of discipline a follow-up meeting(s) must be held. The purpose of the meeting(s) is to advise the Team Member(s) of their progress on correcting behavior, modification of task or standards, individual performance, or any other corrective action required by the discipline assessed. Managers must conduct the follow-up meeting(s) with the involved Team Member(s) at a frequency of no greater than thirty (30) day intervals, until desired and/or agreed behavior has been achieved.

Once the Team Member and manager agree that all requirements set forth by the discipline have been met, the follow-up is complete.



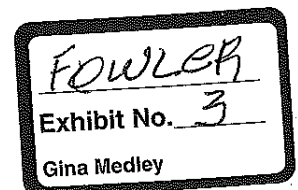
**DEVELOPMENT AND ACCOUNTABILITY POLICY  
SIGNATURE PAGE**

I acknowledge I have received a copy of the Watco Transportation Services Development and Accountability Policy. I understand that the Development and Accountability Policy is the current policy of the Watco Transportation Services and Watco Transportation Services reserves the right to add, delete, or modify this policy as it deems appropriate. I will familiarize myself with its contents.

Joseph Fowler  
Employee Name (Please Print)

Joseph Fowler  
Employee Signature

4-23-2010  
Date



03/26/2013 12:14

409385

TIBR

PAGE 04/17

February 15<sup>th</sup>, 2013

To: Joe Fowler  
Engineer - Job 221

Dear Mr. Fowler

You are hereby notified that you are to attend a formal hearing in the office of the General Manager, Timber Rock Railroad at 505 W. Avenue F, Silsbee, Texas 77656 at 1:00 p.m. on Thursday February 21, 2013 in accordance with rules and regulations adopted and published by Timber Rock Railroad.

It is the purpose of this hearing to develop the facts, discover the cause and determine your responsibility, if any, for the incident on February 14<sup>th</sup>, 2013. The incident in question whereas job 221 (in which you were the Engineer) voided your track warrant while your train was occupying track warrant territory. If the facts of this hearing reveal that you have responsibility in the above listed incidents, then you will be in violation of the following General Code of Operating Rules;

General Code of Operating Rules

- 1.1 Safety
- 1.1.1 Maintaining a Safe Course
- 14.7 Reporting Clear of Limits

You are hereby notified that you have the right to be assisted by your Organization representative and to have witnesses present on your behalf, if you so choose.

Witnesses who are known to the Carrier at this time who have been requested to attend this hearing who may have facts and/or evidence relevant to this investigation are as follows:

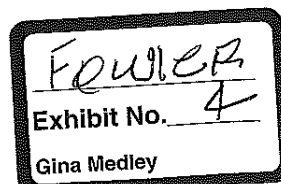
Tony Williamson

Sincerely,

*Douglas Marshall*  
Douglas Marshall  
Senior Trainmaster / Charging Officer

cc: Joshua Kyle Mitchell, union rep  
Hearing officer

*received back 3/22/13  
letter returned to  
sender unsigned  
2/20*



TIBR 6

03/26/2013 12:14 409385 38

TIBR

PAGE 01/17

I Joseph Fowler a religious day  
rights as a Timber Rock employee on  
February 20 2013

Joseph Fowler  
February 20, 2013

FOWLER

Exhibit No. 5

Gina Medley

TIBR 3

03/25/2013 12:14 4893855388

TIBR

PAGE 05/17

# **Timber Rock Railroad** **NOTIFICATION OF CERTIFICATE REVOCATION**

Locomotive Engineer Joseph Fowler

Employee ID No. \_\_\_\_\_

Home Terminal \_\_\_\_\_

Slisbee, TX.

Revocation period begins (mm/dd/yy) \_\_\_\_\_

Thursday, February 14, 2013

Revocation period ends (mm/dd/yy) \_\_\_\_\_

Thursday, March 14, 2013

Brief description of incident:

240.117(e)(4) Occupying Main Track without proper authority.

Sign at the end of this paragraph if you accept certificate revocation and waive right to a formal hearing under 49 CFR Part 240.307. By doing so, you indicate that you have knowledge and understanding of all your rights under 49 CFR Part 240 and voluntarily surrender them.

Joseph Fowler  
 Engineer's Signature

OR

FORMAL HEARING HELD ON: \_\_\_\_\_

In accordance with 49 Code of Federal Regulations, Part 240, you are hereby notified of the revocation of your engineer certification. This action was taken as a result of:

- 240.117 (e) (1) ☐ Failure to control a locomotive or train in accordance with a signal indication that requires a complete stop before passing it.
- 240.117 (e) (2) ☐ Failure to adhere to limitations concerning train speed when the speed at which the train was operated exceeds the maximum authorized limit by at least 10 miles per hour.
- 240.117 (e) (3) ☐ Failure to adhere to procedures for the safe use of train or engine brakes when the procedures are required for compliance with transfer, initial or intermediate terminal test provisions of 49 CFR Part 232.
- 240.117 (e) (4) ☒ Occupying main track without proper authority.
- 240.117 (e) (5) ☐ Failure to comply with prohibitions against tampering with locomotive mounted safety devices.
- 240.117 (e) (6) ☐ Incident of noncompliance with FRA drug and alcohol regulations as published in 49 CFR Part 219.101.

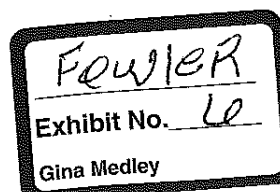
Pursuant to 49 CFR Part 240, you will not be allowed to operate a locomotive until revocation period ends.

Receipt acknowledged:

Joseph Fowler 2-25-2013  
 Engineer's Signature Date

Douglas Marshall 02-20-2013  
 Supervisor's Signature Date

Copies to: Director of Operations  
 Regional Safety Manager  
 General Manager  
 Personal Record File



TIBR 7

## TEAM MEMBER WARNING NOTICE

## Team Member Information

Date: 8-9-11 Department: Transportation  
 Team Member's Name: Doc Fowler Social Security #: 45602-5970  
 Hire Date: 6-8-04 Position: Engineer

## Type of Warning

☐ Verbal Warning ☒ Written Warning ☐ 2<sup>nd</sup> Written Warning ☐ Final Warning

## Type of Violation

<input type="checkbox"/> Tardiness	<input type="checkbox"/> Quality of Work	<input type="checkbox"/> Carelessness
<input type="checkbox"/> Absenteeism	<input type="checkbox"/> Quantity of Work	<input checked="" type="checkbox"/> Safety
<input type="checkbox"/> Insubordination	<input type="checkbox"/> Neatness / Grooming	<input type="checkbox"/> Drug Policy Violation
<input type="checkbox"/> Intoxication or Drinking	<input type="checkbox"/> Other	

Was there a witness to the violation ☒ Yes ☐ No Witness Name: Josh Tripplett  
 Violation Date: 8-9-11 Time Occurred: 04:15 Place of Violation: Silsbee Road

Company Statement	Warning Statement
1. Describe in detail what the Team Member has done	1. Explain in detail the steps that must be taken to improve performance.
2. Cite how this interferes with the work environment, Team Member performance, business operations, or the well being of other Team Members.	2. Cite date by which improvements must be in place
3. Cite the rule, policy, law, standard, or regulation that was violated	3. Cite consequences if goals or improvements are NOT achieved by date specified.

## Company Statement: (What did the Team Member do)

Failed to stop Locomotive short of fixed derail and causing Locomotive to derail. Employee is receiving 15 days deferred.

## Warning Notice: (What must the Team Member do to improve performance)

Have better communication with Conductor. Have better control of equipment.

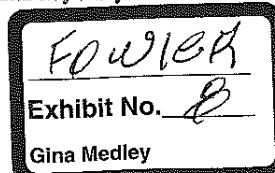
When (what date) must the Team Member have the improvements in place: ASAP  
 What are the consequences if improvements are NOT made: Employee will be handled per DTA Policy

## Team Member Comments:

Supervisor's signature: [Signature] Date: 8-9-11

Team Member's signature: [Signature] Date: \_\_\_\_\_

Your signature above does not indicate that you agree with what has been written only that you have read the above warning.



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TEAM MEMBER WARNING NOTICE

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Company Statement: (What did the Team Member do) continued

Warning Notice: (What must the Team Member do to improve performance) continued



## TIMBER ROCK RAILROAD WAIVER OF HEARING

Date: August 9, 2011.

To: Joe Fowler

Dear Mr. Fowler

I, \_\_\_\_\_, hereby waive my right to a formal hearing and accept without protest a fifteen (15) day deferred suspension from service in that while I was working as a Engineer on the Silsbee Switcher (Job # TIBR221) on August 9, 2011 in Silsbee, Texas, I failed to stop short of a fixed derail in track 103. I further understand that my actions have resulted in the violation of the following parts of the GCOR.

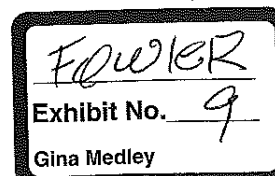
### General Code of Operating Rules

- 1.1.1 Maintaining a Safe Course
- 1.1.2 Alert and Attentive
- 1.6 Conduct
  - 1. Careless of the safety of themselves and others
  - 2. Negligent
- 6.28 Movement on Other than Main Track
- 7.1 Switching Safely and Efficiently
- 8.20 Derail Location and Position

Due to the seriousness of this incident I fully acknowledge that I will be subject to a probationary period for one year from the date of this incident (8/9/11). If at any time during this time period, I am found to be at fault for a serious rules infraction of any kind I will be handled in accordance to the D&A policy. I also acknowledge by my signature below, that I have reviewed all of the rules listed above and understand all of them in their entirety as well as which sections of each rule that I failed to follow.

Employee Signature: Joseph H. Fowler Date: 8-9-2011

Company Official: Gina Medley Date: 8-9-11



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